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IN THE COURT OF APPEALS OF INDIANA

DENVER CLIFFORD,	)	
	)	
Appellant-,	)	
	)	
vs.	)	No. 18A05-0711-CR-638
	)	
STATE OF INDIANA,	)	
	)	
Appellee-.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT #1
The Honorable Marianne L. Vorhees
Cause No. 18C01-0708-FB-0018

June 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Denver Clifford was convicted of two counts of Robbery[1] and four counts of Criminal Confinement,[2] all as class B felonies. Clifford challenges all of the convictions on the same basis, i.e., that the evidence was not sufficient to prove he was the person who committed those crimes.

We affirm.

The facts favorable to the convictions are that on November 13, 2006, a man entered A Place To Tan, a Muncie tanning salon, wearing blue latex gloves, a hooded sweatshirt, sunglasses, and a ski mask. Employees Jessica Estell and April Shuman, and customers Shelby Cloyd and Taylor Unroe were present in the salon at the time. The assailant, later identified as Clifford, pointed a gun at Estell and demanded cash. As Estell began to take money from the cash register, another customer, Kim Royse, entered the salon. Clifford confined Royse, Shuman, and Cloyd in one tanning room and bound their hands and feet with zip ties, and confined Unroe in a similar fashion in another tanning room. He then returned with Estell to the cash register, where Estell gave him cash. He placed Estell in the same room with Royse, Shuman, and Cloyd. As he prepared to leave, Clifford told the women not to scream or call the police for fifteen minutes after he left and that he would shoot them if they did not obey. He also told them that someone would be watching from across the street to make sure they complied. After he exited the salon, he encountered another customer, Brittany Sponseller, sitting in her car, talking on her cell phone, and preparing to enter the salon. At gunpoint, Clifford ordered her to get out of her car, took her

1 Ind. Code Ann. § 35-42-5-1(1) (West, PREMISE through 2007 1st Regular Sess.).
2 I.C. § 35-42-3-3 (West, PREMISE through 2007 1st Regular Sess.).

cell phone and car keys, and ordered her to walk down the road. Sponseller complied with his demands. After Clifford left, Sponseller returned to the store, entered, and freed the victims.

Several weeks after the robbery, an acquaintance of Clifford's read a description of the robber in a local newspaper and thought it might be Clifford. He reported this to police. An investigation ensued, during which five of the six victims identified Clifford via either photo array or line-up. Clifford was charged with two counts of robbery as class B felonies, six counts of criminal confinement as class B felonies, and five counts of intimidation as class C felonies. Following a September 2007 trial, a jury returned guilty verdicts on all counts. The trial court subsequently entered judgment of conviction on the charges indicated above.

Upon appeal, Clifford contends the evidence was not sufficient to prove he was the perpetrator of the salon robberies. Our standard of review for challenges to the sufficiency of evidence is well settled.

> When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id*. at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

Gleaves v. State, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007).

In support of his argument that the identity evidence was insufficient, Clifford lists several factors that would have made it difficult for the various victims to identify the

perpetrator of the robbery. Included in this list are: (1) the perpetrator wore a ski mask and sunglasses during the robbery; (2) the confrontation with one victim lasted barely thirty seconds and took place outside at night; and (3) one victim covered her eyes with her hands during a portion of the robbery. Clifford also notes that one victim did not positively identify him as the perpetrator until trial, notwithstanding that she had viewed two photo arrays within a month of the robbery and not positively identified Clifford's photo.

All of the foregoing facts were brought to the jury's attention during trial. In fact, the witnesses were questioned specifically about those matters and they explained how, for example, one was able to observe the robber with her hands covering her eyes. Thus, the jury considered that evidence in assessing the credibility of the various witnesses' identification of Clifford as the person who robbed the salon on November 13, 2006. In the end, all of the witnesses who testified at trial unequivocally identified Clifford as the robber. That evidence was sufficient to support his convictions.

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur.